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CHARLES ELMORE CROP
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Supreme Court of the United States

OCTOBER TERM, 1949.

No. 203.

REGINALD CRANE, *Petitioner*,

v.

THE PEOPLE OF THE STATE OF MICHIGAN.

BRIEF OPPOSING PETITION FOR CERTIORARI.

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I

Opinions Below[*]

Counsel is correct: the opinion (8-18) of the trial judge, who deceased, and the opinion (19-22) of his successor, denying the petitioner's motion to vacate plea and sentence, are not published. The opinion of the court below (56-64) is reported as *People v. Crane*, 323 Mich. 646, at 652-662, 36 NW 2d 170-174, while the opinion of the dissenting justices appears in 323 Mich. 647-652, 36 NW 2d 175-177.[1]

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[*]

Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed record.

[1]

Under Michigan practice, causes on appeal are assigned to one of the justices upon submission and no vote is taken until his opinion has been written. Consequently, that opinion, whether prevailing or dissenting, is first published in the reports.

II

Counter-Statement on Jurisdiction

We concede, of course, that the jurisdiction of this Court was timely invoked under 28 U.S.C. § 1257 (3). Whether the Court should exercise such jurisdiction and issue the writ depends largely, we assume, upon the substance or lack of substance in the petitioner's claim of denial of due process of law in connection with his plea of guilty.

Briefly it is our position that petitioner's claim lacks substance and that the trial court as well as the court below disposed of the matter in deciding issues of fact within their exclusive province, i.e., that as a matter of fact the petitioner failed to establish that his plea of guilty was coerced.[2]

III

Question Presented

The question as stated by counsel seems to us oversimplified, and it rests on premises we cannot accept. In the court below, as appears from the majority opinion (56), 323 Mich. 652, one of two meritorious questions discussed in defendant's (petitioner here) brief, was whether his plea of guilty was as a matter of fact, "made freely, with full knowledge of the nature of the accusation, and without undue influence", and the court below, after reviewing the facts found by two circuit judges, held (1) that the defendant,

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[2] Both the trial judge, his successor, and the court below rejected the credibility of the petitioner as a witness.

" 'to put it mildly, is not to be trusted to tell the truth whenever it will conflict with his own purposes and desires' ", (2) that the defendant did not act under compulsion of the agreement with the State police officer or under any undue influence other than that of his knowledge that he was guilty and that the officers had the proofs, 323 Mich. 657-658, and (3) that the plea was freely and voluntarily made, 323 Mich. 662. And the Court found many other detailed facts, as distinguished from such conclusions, which substantiated their findings.

Adding such factors to the question as defined by petitioner's counsel, we think it might be stated as follows:[3]

> Whether in view of the findings of fact made by the courts of Michigan in this cause, and in the light of all the surrounding facts and circumstances disclosed by the record, must it be said as a matter of law that the petitioner was denied due process of law guaranteed by the Fourteenth Amendment in that his plea of guilty to a charge of crime punishable by imprisonment, was involuntary, obtained by undue influence, coerced, and procured by a written agreement between a state police officer and the petitioner 28 days before arraignment and plea of guilty to such offense, under the express terms of which agreement (29) the police officer agreed to and with the petitioner that if he would make and sign a written statement regarding his recent crimes he would be charged with and brought into court upon one charge only, and he would be arraigned on a charge of breaking and entering in the nighttime.

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[3]

The Court will realize, of course, the difficulty encountered in attempting to include in the statement of such a question, all of the premises.

IV

Counter-Statement of the Case

We respectfully note, Supreme Court Rule No. 27, the following inaccuracies and insufficiencies in petitioner's statement:

1. We would first correct an impression left by counsel's statement in the third paragraph, page 5, of the petition, to the effect that "at no time during any of the proceedings mentioned above did petitioner have counsel, nor at any time was counsel offered him, the Michigan circuit court relying upon the then existent Michigan rule that a prisoner is not entitled to have counsel appointed in order to advise him as to his plea" (11). The question of denial of the aid of counsel, was not raised in the Supreme Court of Michigan, nor was it decided on review.[4]

2. It is said, petition, p. 3, that an agreement was ultimately reached that petitioner "would 'make and sign a written statement regarding his recent crimes' and would plead guilty to one of such crimes, to wit, breaking and entering, nighttime, first offense, in return for which Beck (the police officer) agreed that petitioner would be charged only with this one offense and as a first offender". The written agreement (29) is not signed by the petitioner, is signed only by the detective, and does not mention a plea of guilty.

3. Numerous statements are made on pp. 4-5 of the petition based on the testimony (24-42) of the petitioner, ac-

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[4] This also applies to several statements to the effect that the petitioner did not have counsel.

cepted by counsel as true and at its face value. But the circuit judge and the Supreme Court of Michigan, upon reading or hearing such testimony, were convinced (21, 60) that " . . the respondent, to put it mildly, is not to be trusted to tell the truth whenever it will conflict with his own purposes or desires". Apparently the Supreme Court was of the opinion (59), 323 Mich. 655-656, that petitioner testified too much, that since he accused every officer, prosecutor and judge connected with his case, he was not a credible witness and could not be believed.

4. To the petitioner's statement should be added the following, which we believe substantially correct, taken from the State's brief filed in the court below:[5]

In October, 1942, defendant, (according to his admissions to a deputy sheriff) together with his little boy, broke and entered in the nighttime a Phillips 66 filling station in the Village of Watervliet (5, 48, 49), and stole therefrom a cash register, auto batteries and money (5, 49). On March 1, 1943, defendant was arrested and sentenced to jail on a charge of drunk driving at Marshall, Michigan (25). Deputy Sheriff Kubath of Berrien County, who had been investigating the breaking and entering at Watervliet, learned of defendant's apprehension and detention at Marshall and went there to question defendant concerning the Watervliet breaking and entering (49). In the course of this interview defendant first denied his guilt but upon being confronted with the articles stolen, admitted the offense to Deputy Sheriff Kubath (49). Thereafter the Marshall authorities turned defendant over to the Berrien County Sheriff and defendant on March 6, 1943, was taken

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[5]

A great deal of the statement, of course, is based upon admissions said to have been made by the petitioner to the deputy sheriff, as related by the latter in his testimony (47-53).

before Municipal Judge Frank Hammond of Benton Harbor, on a complaint and warrant charging breaking and entering in the nighttime (7), whereupon defendant waived examination and was bound over to circuit court (7) and remanded to the Berrien county jail in lieu of bail (7).

While in the Berrien county jail defendant gave a statement to the Berrien County officers (not to Victor Beck) which was taken in question and answer form by the official county stenographer (14) in which he admitted a series of breaking and enterings in Texas, Michigan, Colorado, Iowa and Indiana (14, 15). In addition to these admitted offenses, defendant's record showed that in 1926 he was sentenced for one to ten years for unlawfully driving away an automobile; in 1930 at Jackson, Michigan he was sentenced to 5 to 14 years for forgery; in 1935 in Oklahoma he was sentenced to 3½ years for forgery, second degree; in 1937 at Jackson, Michigan, he was sentenced to 7½ to 16 years for escaping prison; and in 1940 at Marquette Michigan, he was sentenced to 3 to 6 years for escaping prison (15).

The record is bare of any evidence indicating that Detective Victor Beck of the Michigan state police had any contact with defendant after defendant was turned over to the Berrien County officers.

On March 29, 1943 defendant was arraigned in Berrien county circuit court and tendered a plea of guilty which was received and thereupon he was remanded to the county jail to await sentence (6). Thereafter an investigation and thorough report of defendant's case was made by the probation officer (17). After this Judge Evans conferred privately with defendant to assure himself that the defendant's plea was knowingly and freely made (17), and also Judge Evans held a presentence conference with the

probation officer, the prosecuting attorney and a representative of the sheriff's office (17). On April 16, 1943, 18 days after defendant's arraignment and plea of guilty, Judge Evans imposed sentence (8).

Approximately one year later, on March 17, 1944, defendant asked leave to withdraw his plea of guilty and proffered a motion for a new trial (8).

V

Manner in Which Federal Question Raised

We do not choose to quibble over the fact that the federal question was raised in the Michigan courts, *viz.*, whether petitioner's plea of guilty was involuntary and hence violative of due process, though we do feel that this Court should accept the lower's courts finding of evidentiary facts, as distinguished from their conclusions of law.[6]

VI

Reasons for Denying Writ

We agree that the question presented is controlled by decisions of this Court cited in petitioner's brief, p. 9, among others the following recent cases,

Watts v. Indiana, 338 U.S. 47;

Harris v. South Carolina, 338 U.S. 68;

Turner v. Pennsylvania, 338 U.S. 62.

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[6] Watts v. Indiana, 338 U.S. 47, 49, 50-51.

The reasons for denying a writ of certiorari are, we respectfully submit, those assigned by the Michigan Supreme Court, 323 Mich. 652-662, in its prevailing opinion, for affirming the order of the circuit court denying petitioner's motion for leave to withdraw plea of guilty and to file motion for new trial.

Such reasons are so clearly enumerated that to repeat them here would merely add to the burden of the Court. So for the present we stand upon the opinion of the Michigan Supreme Court, which sums the matter up (64), 323 Mich. 661-662, as follows:

> "Thus, in the instant case, the utter lack of any showing that anyone urged defendant to plead guilty or asked him to do anything other than make a written statement concerning his recent crimes, the fact that defendant had had much previous court experience and that he insisted that the figures in the information be changed, his expressed desire to make restitution, the convincing proofs of defendant's guilt of the offense charged, the trial judge's private conference with defendant and assurance therefrom that the plea was freely and voluntarily made, the lapse of time between Beck's promise to defendant and his ultimate confession to the sheriff and between that confession and his circuit court arraignment and between arraignment and sentence, and the lack of protests or objections by defendant during the 5-week period between confession and sentence, convince us that the trial judge was justified in concluding that the plea of guilty was freely and voluntarily made, and that it was not an abuse of discretion to deny defendant's motion."

We agree that the record in this cause presents novel questions some of which may not have been decided by this

Court, and of course it is for this Court to say in their discretion whether they should be decided now.

Mr. Justice Frankfurter, announcing the judgment of the Court in *Watts v. Indiana, supra,* 338 U.S. 49, 50, had this to say:

> "On review here of State convictions, all those matters which are usually termed issues of facts are for conclusive determination by the State courts and are not open for consideration by this Court. Observance of this restriction in our review of State courts calls for the utmost scruple. But "issue of fact" is a coat of many colors. It does not cover a conclusion drawn from uncontroverted happenings. When that conclusion incorporates standards of conduct or criteria for judgment which in themselves are decisive of constitutional rights. Such standards and criteria, measured against the requirements drawn from constitutional provisions, and their proper applications, are issues for this Court's adjudication. . ."

We are frankly puzzled to know whether the foregoing principle applies to the credibility of witnesses whose testimony has been rejected by State courts.

In the case at bar the circuit judge and the Supreme Court agreed that the petitioner could not be believed, partly because the story he told on the stand was too weird to be given credence. The circuit judge had opportunity to observe the demeanor of this witness, his candor or lack of frankness, and he concluded he could not accept his fantastic tale, which was to the effect that the law-enforcing officers of the State having to do with his case, the state policeman, the deputy sheriff who arrested him, the justice of the peace, the prosecuting attorney, not to mention the

trial judge, had entered into a conspiracy to deprive him of his constitutional right to due process when accused of a criminal offense.

Without show of authority, but relying somewhat on common sense, we would respectfully submit that when a State court in good faith makes such a finding, this Court should sustain it.

VII

Conclusion

We, therefore, respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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Solicitor General of the State of Michigan

Counsel for Respondent